

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 1000 Friends of Washington,

4
5 Petitioner,

6 v.

7
8 Thurston County,

9 Respondent

Case No. 05-2-0002

**COMPLIANCE ORDER – LAMIRDS and
LOT AGGREGATION**

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12 **I. SYNOPSIS**

13 In response to this Board's earlier finding of non-compliance, Thurston County has adopted
14 new comprehensive plan policies, zoning and development regulations relating to high-
15 density rural areas. Under prior provisions, areas of high rural densities – one and two
16 dwelling units per acre, and one dwelling unit per two acres – were allowed in the rural
17 areas without meeting the GMA requirements for limited areas of more intensive rural
18 development (LAMIRD). In adopting Resolution No. 13833 and Ordinance No. 13834, the
19 County has, with a limited exception, cured this area of non-compliance by designating 63
20 LAMIRDS of limited and contained more intensive development; and by down-zoning the
21 remaining high density rural areas to rural densities of one dwelling unit per five acres, one
22 dwelling unit per ten acres, and one dwelling unit per twenty acres. This represents
23 excellent staff work and the County Commissioners deserve credit for making the difficult
24 choices necessary to achieve compliance.
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27 There was a challenge to only one of the LAMIRDS designated by the County – the
28 Rochester LAMIRD. In this case, the Board reviews the basis for the Rochester LAMIRD in
29 terms of the statutory requirements to minimize and contain existing areas of more intensive
30 rural development based primarily on the "built environment" as of July 1990. The
31 Legislature imposed strict requirements on the area that may be included in (d)(i) LAMIRDS
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1 because residential LAMIRDs are commonly developed at densities that would otherwise
2 constitute sprawl.

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4 Where there were water lines constructed as of 1990 and/or residential structures at more
5 intensive rural densities, the Board finds that this properly constitutes the “built
6 environment”. On the other hand, small lots that were not developed by 1990; and plans
7 for further water service areas; do not constitute man-made facilities and structures such
8 that they may be considered the “built environment” pursuant to RCW 36.70A.070 (5)(d)(iv),
9 (v). The Board finds that Option 1 of the study area for the Rochester LAMIRD
10 predominately includes the “built environment” and uses compliant logical outer boundaries
11 to contain it. However, the 1990 built environment does not predominate in Options 2-5 of
12 the County’s study area, and the County’s reliance upon post-1990 development to include
13 those areas in the Rochester LAMIRD is clearly erroneous.
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16 In Option 6 of the study area for the Rochester LAMIRD, the 1990 built environment
17 predominates. It is therefore eligible for inclusion in a residential LAMIRD. However,
18 expanding the boundaries of a residential LAMIRD across lands otherwise not eligible for
19 inclusion to reach a smaller area of “built environment” exceeds the proper scope of a
20 logical outer boundary. The inclusion of Options 2, 3 and 5 cannot therefore be based on
21 Option 6.
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24 This case also includes a challenge to the amendment to the County’s lot aggregation
25 requirements – TCC 20.56.020. The Board finds that the petitioners did not meet their
26 burden in showing that this amendment will have any significant impact on the development
27 of substandard lots in the rural area. This amendment therefore complies with RCW
28 36.70A.070(5).
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30 Finally, Petitioners seek a determination of invalidity as to the non-compliant portions of the
31 Rochester LAMIRD. However, the Board has been impressed by the good faith of Thurston
32 County in ensuring that inconsistent development did not take place during the prior

1 compliance remand period. Further, there has been no showing of a serious risk that
2 significant inconsistent development, precluding ultimate compliance, will take place in the
3 absence of an invalidity determination. Should circumstances change, the Board agrees to
4 consider a properly supported motion demonstrating that invalidity is necessary. However,
5 at this time, the Board finds a determination of invalidity to be unwarranted.
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7 **II. PROCEDURAL HISTORY**

8 The Board's Final Decision and Order in this case was issued July 20, 2005. In that
9 decision, six conclusions of non-compliance were entered. Thurston County appealed
10 these determinations to Division II of the Court of Appeals. The Board's decision with
11 respect to Conclusion of Law E was affirmed by the Court of Appeals but the County has
12 sought review by the Washington Supreme Court so no final decision on appeal has been
13 entered. The Board therefore continues to have jurisdiction to enforce its decision with
14 respect to limited areas of more intensive rural development.¹
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17 Based on the County's work plan in responding to the non-compliance findings, the Board
18 has divided the compliance issues. This decision addresses the County's compliance
19 efforts with respect to Conclusion of Law E – the lack of compliance of the County's high
20 density rural residential designations with the requirements for limited areas of more
21 intensive rural development (LAMIRDs):
22

23 The County's high density rural residential designations (SR – 4/1; RR 2/1; RR 1/1; and
24 RR 1/2); Housing and Residential Densities Policies 1 and 2, and Rural Land Use and
25 Activities Policy 8; and the County's development regulations implementing these
26 designations (T.C.C. Ch. 20.10; T.C.C. Ch. 20.11; T.C.C. Chapter 20.13; and T.C.C.
Chapter 20.14) fail to comply with RCW 36.70A.070(5).
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28 The County undertook a work program for LAMIRD boundary review in response to this
29 Board's decision.² On June 18, 2007, the Board of County Commissioners adopted
30 Resolution No. 13833 amending the comprehensive plan and Ordinance No. 13834
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32 ¹ See discussion in Compliance Order on Rural Densities and Agricultural Lands Issues, October 19, 2007
under this case number.

² August 7, 2007 LAMIRD Compliance Report at 3.
COMPLIANCE ORDER LAMIRDS AND LOT AGGREGATION
Case No. 05-2-0002
November 30, 2007
Page 3 of 31

1 amending the zoning map and development regulations.³ The County analyzed 21,939
2 acres of non-urban residential lands into 55 study areas to ensure compliance with RCW
3 36.70A.070(5)(d). As a result, the County determined to designate 12,879 acres as
4 LAMIRDs and to add 9,063 acres to the rural resource and residential land use category.⁴
5 The zoning code and zoning map were amended through the adoption of Ordinance 13834
6 to, among other things, establish and map residential LAMIRDs; and to delete other rural
7 residential zones of densities greater than one dwelling unit per five acres.⁵
8

9
10 Of the 63 LAMIRDs designated and mapped by the County, only LAMIRD #57 (also the
11 “Rochester LAMIRD”) was challenged by Petitioner Futurewise.⁶ Intervenor Carl Teitge was
12 granted Intervenor status on August 21, 2007. On September 5, 2007, Adams Cove Group
13 filed its notice of intent to participate in the compliance hearing on LAMIRDs, joining in
14 Futurewise’s objections to a finding of compliance. On September 19, 2007, both the
15 Rochester Water Association and Bayfield Resources were granted Intervenor status. All of
16 the Intervenor support the County’s decision with respect to the creation of the Rochester
17 LAMIRD.
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19
20 A compliance hearing on the LAMIRD issues was held on October 15, 2007. Attorney and
21 Planner Tim Trihimovich represented Futurewise. Deputy Prosecuting Attorney Jeffrey
22 Fancher represented Thurston County, with the assistance of consultant and former County
23 planner Katie Knight. Attorney Carl Teitge appeared *pro se*. Attorney Alexander Mackie
24 represented the Rochester Water Association and Attorney Erick Laschever represented
25 Bayfield Resources. All three board members attended, Margery Hite presiding.
26

27 At the compliance hearing, the Board admitted the Rochester Water Association’s proposed
28 exhibits as Exhibits 625-630. Two tax parcel maps offered by Carl Teitge were admitted as
29 Exhibits 631 and 632. The Thurston County Buildable Lands Report of 2002 as proposed
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32 ³ August 7, 2007 LAMIRD Compliance Report at 9.

⁴ Resolution No. 13833 at 2.

⁵ Ordinance 13834.

⁶ Objection to Finding of Compliance – LAMIRD Remand Issues.

1 by Futurewise was admitted as Exhibit 633. The 2007 Buildable Lands Report was
2 excluded since it had not been adopted at the time that the County passed Ordinance No.
3 13834 and Resolution No. 13833. The Board further agreed to take official notice of the
4 subsequent adoption of another Thurston County resolution, Resolution No. 13885 and its
5 attachments.
6

7 **III. BURDEN OF PROOF**

8 For purposes of board review of the comprehensive plans and development regulations
9 adopted by local government, the GMA establishes three major precepts: a presumption of
10 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
11 decisions of local government.
12

13 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
14 amendments to them are presumed valid upon adoption:
15

16 Except as provided in subsection (5) of this section, comprehensive plans and
17 development regulations, and amendments thereto, adopted under this chapter are
18 presumed valid upon adoption.

19 RCW 36.70A.320(1).
20

21 This same presumption of validity applies when a local jurisdiction takes legislative action in
22 response to a noncompliance finding; that legislative action is presumed valid. The only
23 time that the burden of proof shifts to the County is when the County is subject to a
24 determination of invalidity.⁷ Here, no finding of invalidity was imposed so the burden
25 remains on the Petitioners.

26 The statute further provides that the standard of review shall be whether the challenged
27 enactments are clearly erroneous:

28 The board shall find compliance unless it determines that the action by the state
29 agency, county, or city is clearly erroneous in view of the entire record before the
30 board and in light of the goals and requirements of this chapter.

31 RCW 36.70A.320(3)
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⁷ RCW 36.70A.320(2) and (4).

1 In order to find the County's action clearly erroneous, the Board must be "left with the firm
2 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
3 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
4

5 Within the framework of state goals and requirements, the boards must grant deference to
6 local governments in how they plan for growth:

7 In recognition of the broad range of discretion that may be exercised by counties and
8 cities in how they plan for growth, consistent with the requirements and goals of this
9 chapter, the legislature intends for the boards to grant deference to the counties and
10 cities in how they plan for growth, consistent with the requirements and goals of this
11 chapter. Local comprehensive plans and development regulations require counties and
12 cities to balance priorities and options for action in full consideration of local
13 circumstances. The legislature finds that while this chapter requires local planning to
14 take place within a framework of state goals and requirements, the ultimate burden and
15 responsibility for planning, harmonizing the planning goals of this chapter, and
16 implementing a county's or city's future rests with that community.

17 RCW 36.70A.3201 (in part).

18 In sum, the burden is on Petitioners to overcome the presumption of validity and
19 demonstrate that any action taken by the County is clearly erroneous in light of the goals
20 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
21 Where not clearly erroneous, and thus within the framework of state goals and
22 requirements, the planning choices of local government must be granted deference.

23 IV. ISSUES PRESENTED

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25 Issue 1: Do the County's high density rural residential designations (SR – 4/1; RR 2/1; RR
26 1/1; and RR 1/2); Housing and Residential Densities Policies 1 and 2, and Rural Land Use
27 and Activities Policy 8; and the County's development regulations implementing these
28 designations (T.C.C. Ch. 20.10; T.C.C. Ch. 20.11; T.C.C. Chapter 20.13; and T.C.C.
29 Chapter 20.14) continue to fail to comply with RCW 36.70A.070(5). (Conclusion of Law E)

30 Issue 2: Does the repeal of portions of the lot aggregation regulation (TCC 20.56.020) fail
31 to comply with GMA requirements for rural densities in the rural area?
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V. DISCUSSION

Issue 1: Do the County's high density rural residential designations (SR – 4/1; RR 2/1; RR 1/1; and RR 1/2); Housing and Residential Densities Policies 1 and 2, and Rural Land Use and Activities Policy 8; and the County's development regulations implementing these designations (T.C.C. Ch. 20.10; T.C.C. Ch. 20.11; T.C.C. Chapter 20.13; and T.C.C. Chapter 20.14) continue to fail to comply with RCW 36.70A.070(5). (Conclusion of Law E)

Positions of the Parties

Futurewise argues that the Rochester LAMIRD (LAMIRD #57) fails to comply with the GMA's requirements for limited areas of more intensive rural development (RCW 36.70A.070(5)(d)(iv) and (v)).⁸ Futurewise argues that the aerial photographs of the area in 1990 show an absence of development that would justify the outer boundaries established by the County.⁹ Furthermore, Futurewise asserts, to justify a finding of pre-existing areas or uses of more intensive rural development, the existence of water lines alone is not enough, the water lines must be of the kind needed to support more intense development rather than just single water lines typical of rural areas outside LAMIRDs.¹⁰

The County responds that it followed the requirements of RCW 36.70A.070(5)(d) when it established the logical outer boundary for the Rochester LAMIRD.¹¹ The logical outer boundary for the LAMIRD, the County asserts, recognizes "historic development patterns, preserves the character of the natural neighborhood, prevents an abnormally irregular boundary, and provides public services in a manner that does not permit low-density sprawl."¹² The County points to the fact that Rochester was an existing community in 1990 with commercial and industrial uses within the core area and relatively higher density

⁸ Futurewise's Objection to a Finding of Compliance on the Limited Areas of More Intense Rural Development (LAMIRD) Remand Issues at 4-5.

⁹ Objections to a Finding of Compliance at 6-8.

¹⁰ *Ibid* at 8.

¹¹ Thurston County's Response to Compliance Objections Involving the Rochester LAMIRD and the Lot Aggregation Issue at 10.

¹² *Ibid*.

1 residential development surrounding the core.¹³ The LAMIRD boundaries, the County
2 states, were drawn to recognize the existing community of Rochester with its “planned”
3 water service area.¹⁴

4
5 Intervenor Teitge argues that Futurewise has a limited approach to determining the “built”
6 environment which “does not include consideration for streets, power, telephone, cable,
7 small waterlines, water systems, water rights and vested lots.”¹⁵ Intervenor Teitge asserts
8 that new houses are being built on small vested lots which have created a “smaller more
9 urban residential use” that is being protected as a LAMIRD.¹⁶ This Intervenor argues that
10 his property is bounded by pre-1990 structures on LAMIRD sized lots and was served by
11 roads and utilities in 1990 so that it was appropriate for the County to include it in the
12 Rochester LAMIRD.¹⁷

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15 Intervenor Rochester Water Association (also “RWA” or “Water Association”) asks the
16 Board to uphold the Rochester LAMIRD as adopted by the County.¹⁸ The Water
17 Association argues that the County utilized the areas “developed” as of 1990 to establish
18 the logical outer boundaries of the Rochester LAMIRD.¹⁹ Key to this analysis, the Water
19 Association points out, was using the “existing service area boundaries of the RWA (not to
20 be confused with RWA’s projected future water service area.)”²⁰ While limited infill is
21 allowed in the Rochester LAMIRD, the Water Association asserts, it is in an area served by
22 the existing water system and protects scarce water supplies.²¹

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28 ¹³ *Ibid* at 11; Exhibit WW (Index No. 601)

29 ¹⁴ *Ibid* at 12.

30 ¹⁵ Carl Teitge’s Response to Futurewise’s Objection to a Finding of Compliance LAMIRD at 7.

31 ¹⁶ *Ibid* at 9.

32 ¹⁷ *Ibid* at 15-16.

¹⁸ Intervenor Rochester Water Association’s Response Brief to Futurewise’s Objection to a Finding of
Compliance on the LAMIRD Remand Issues.

¹⁹ *Ibid* at 5–11.

²⁰ *Ibid* at 5; Index No. 541 at p. 3.

²¹ *Ibid* at 12.

1 **Board Discussion**

2 Limited areas of more intensive residential rural development (LAMIRDs) may form part of
3 the rural element of a comprehensive plan but are an exception to the usual densities and
4 intensities for which the rural lands are intended.²² In general, rural densities and intensities
5 allow sufficient land so that (among other things) open space, the natural landscape, and
6 vegetation predominate over the built environment.²³ Residential LAMIRDs are allowed to
7 recognize historic (as of 1990) more intensive areas of rural development in the rural area;
8 however, such LAMIRDs are subject to requirements to contain growth and limit future
9 development precisely because they are often developed at densities and intensities that
10 would constitute “low-density sprawl” if they were not limited and contained.²⁴ For this
11 reason, the GMA sets requirements for the establishment of LAMIRDs that are significantly
12 more detailed than many of the other planning choices available to local government under
13 the GMA.
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16 Limited areas of more intensive residential rural development are allowed in the rural area
17 when they are clearly identified and contained, and are based on historic more intensive
18 areas of rural development.²⁵ Such LAMIRDs may allow infill, development and/or
19 redevelopment of existing areas;²⁶ but any development or redevelopment must conform to
20 the character of the existing area.²⁷ The purpose of a LAMIRD is to acknowledge historic
21 communities in the rural areas and allow them to be higher density conforming uses when
22 they would otherwise be considered non-conforming sprawl. That is why the statute
23 requires them to be limited and contained, and based on historic (pre-July 1990) growth.
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28 ²² RCW 36.70A.070(c) and (d).

29 ²³ RCW 36.70A.030(14); Thurston County has adopted a maximum density of 1 dwelling unit per five acres as
30 a rural density in its comprehensive plan. See p. 2-9 of CP.

31 ²⁴ RCW 36.70A.070(5)(d)(iv)

32 ²⁵ RCW 36.70A.070(5)(d)(i) and (iv); 36.70A.070(c)(i). Two other forms of LAMIRD – pursuant to RCW
36.70A.070(5)(d)(ii) and (iii) -allow small scale tourist and recreational uses, and cottage industries and
isolated small-scale businesses respectively.

²⁶ RCW 36.70A.070(5)(d)(i)

²⁷ RCW 36.70A.070(5)(d)(i)(C)

1 If a county elects to establish residential or mixed-use LAMIRDs pursuant to RCW
2 36.70A.070(5)(d)(i), those LAMIRDs must also meet the requirements of RCW
3 36.70A.070(5)(d)(iv):

4 A county shall adopt measures to minimize and contain the existing areas or uses of
5 more intensive rural development, as appropriate, authorized under this subsection.
6 Lands included in such existing areas or uses shall not extend beyond the logical
7 outer boundary of the existing area or use, thereby allowing a new pattern of low-
8 density sprawl. Existing areas are those that are clearly identifiable and contained
9 and where there is a logical boundary delineated predominately by the built
10 environment, but that may also include undeveloped lands if limited as provided in
11 this subsection. The county shall establish the logical outer boundary of an area of
12 more intensive rural development. In establishing the logical outer boundary the
13 county shall address (A) the need to preserve the character of existing natural
14 neighborhoods and communities, (B) physical boundaries such as bodies of water,
15 streets and highways, and land forms and contours, (C) the prevention of abnormally
16 irregular boundaries, and (D) the ability to provide public facilities and public services
17 in a manner that does not permit low-density sprawl.

18 (v) For purposes of (d) of this subsection, an existing area or existing use is one that
19 was in existence:

20 (A) On July 1, 1990, in a county that was initially required to plan under all of
21 the provision of this chapter.

22 RCW 36.70A.070(d)(iv) and (v)(in pertinent part).

23 RCW 36.70A.070(5)(d)(iv) first requires that the county identify an area of existing more
24 intensive rural development, predominately delineated by the "built environment". This
25 Board has held that the "built" environment which is identified must consist of manmade
26 facilities, whether above or below ground:

27 In establishing the LOB for an "existing area" (but not for existing uses) under (d)(iv)
28 a county is required to "clearly" identify and contain the LOB [logical outer
29 boundaries]. That identification and containment must be "delineated predominately
30 by the built environment," but may include "limited" undeveloped lands. WAC 197-11-
31 718 provides some guidance as to a proper definition of "built environment."
32 Nonetheless, we recognize that the reasons for including the term "built environment"
in SEPA and in GMA are not necessarily co-extensive. We conclude that legislative
intent, as determined from reading all parts the GMA with particular emphasis on
(5)(d), means the "built environment" only includes those facilities which are
"manmade," whether they are above or below ground. To comply with the restrictions

1 found in (d), particularly (d)(v), the area included within the LOB must have manmade
2 structures in place (built) on July 1, 1990...
3 Durland v. San Juan County, WWGMHB Case No. 00-2-0062c, Final Decision and Order,
4 May 7, 2001.

5 Under RCW 36.70A.070(5)(d)(i) and (iv), residential LAMIRDs must be based upon the
6 manmade facilities or structures that were built within the identified LAMIRD area as of
7 1990. Legal rights to develop or plans for future development or service are not themselves
8 manmade facilities or structures (although they may lead to the construction of such
9 facilities or structures at some future date.) Vested lots and water service plans, therefore,
10 are not part of the “built environment” and they may not be considered as creating an
11 existing area of more intensive rural development. Thus, the Board finds that the small
12 undeveloped vested lots in the Rochester area are not part of the “built” environment for
13 purposes of identifying an existing area of more intensive rural development under RCW
14 36.70A.070(5)(d)(i) and (iv). Further, the Rochester Water Association service area does
15 not, in itself, define a “built environment.”
16
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19 The County and the Water District also argue that more intense rural development occurred
20 in the Rochester area under the County’s 1994 comprehensive plan and that this later
21 development should be considered part of the “built” environment. The Board disagrees.
22 The Legislature set a firm date by which facilities and structures must have been
23 constructed in order to qualify as part of the built environment of a LAMIRD. For Thurston
24 County, that date is July 1, 1990.²⁸ The fact that the intervening development was lawful
25 under the County’s comprehensive plan does not alter that date. Further, the legislative
26 intent was undoubtedly not to count such later development since the LAMIRD provisions of
27 the GMA were themselves not effective until 1997. In adopting the LAMIRD amendments in
28 1996, the Legislature expressly excluded from consideration as part of the historic built
29 environment any more intensive rural development that had occurred between 1990 and
30 1997. There is no basis for assuming that the Legislature did not mean what it said when it
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²⁸ RCW 36.70A.070(d)(v)
COMPLIANCE ORDER LAMIRDS AND LOT AGGREGATION
Case No. 05-2-0002
November 30, 2007
Page 11 of 31

1 set the date of July 1990. Nor is there any authority in the Board to alter a requirement
2 imposed by the Legislature.

3
4 After identifying the area of historic(as of 1990) more intensive rural development, a county
5 must address four additional factors in establishing the logical outer boundaries of the
6 LAMIRD:

7 Once the existing area has been clearly identified and contained, a county must then,
8 in drawing the LOB [logical outer boundaries], address (A) the need to preserve
9 “existing” (7-1-90) natural neighborhoods and communities, (B) physical boundaries,
10 (C) prevent abnormally irregular boundaries and, (D) ensure that the public facilities
11 and public services necessary to serve the LOB do not “permit low-density sprawl.”
12 Durland v. San Juan County, WWGMHB Case No. 00-2-0062c, Final Decision and Order,
13 May 7, 2001.

14 Thus, there is a two-step process in establishing a LAMIRD – first, the identification of the
15 built environment of the area of more intensive rural development in place in1990; and
16 second, the drawing of the logical outer boundaries around the built environment,
17 considering the statutory factors other than the built environment itself.

18 19 **The Rochester LAMIRD “Built environment”**

20 Futurewise argues that the Rochester LAMIRD includes many lands that were not part of
21 the built environment of more intensive rural development in 1990.²⁹ We turn first, then, to
22 the “built environment” that forms the basis for the Rochester LAMIRD. As we do this,
23 however, it is important to note that the manmade structures and facilities that comprise a
24 LAMIRD’s “built environment” must be those of “more intensive rural development”. The
25 statute allows a residential LAMIRD to be created to recognize and contain existing more
26 intensive rural development.³⁰ Therefore, the LAMIRD must be based on “more intensive
27 rural development” that was constructed as of 1990.
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32 ²⁹ Futurewise’s Objection to a Finding of Compliance on the Limited Areas of More Intense Rural Development
(LAMIRD) Remand Issues at 5-6.

³⁰ RCW 36.70A.070(5)(d)(i)

1 The phrase “more intensive rural development” is not defined in the GMA. However, the
2 meaning of the phrase may be gleaned by its context. A statute must be construed in a
3 manner that does not render any portion thereof meaningless or superfluous.³¹ The
4 Legislature uses the phrase “more intensive rural development” in RCW 36.70A.070(5)(d) in
5 contrast to using either the term “rural development”³² or the term “urban growth”³³. “More
6 intensive rural development” must not mean the same thing as either term, therefore. The
7 pre-existing development that characterizes the built environment of a (d)(i) LAMIRD fits
8 somewhere in the middle between a rural level of development and urban growth; it must be
9 more intensive than rural development but not as intensive as urban development.
10

11
12 In determining whether a manmade structure or facility is “more intensive rural
13 development”, the Board can look to the County’s own definitions of rural residential
14 densities and definitions of residential densities of “more intensive rural development”.
15 Rural residential densities are one dwelling unit per five acres, one dwelling unit per ten
16 acres, and one dwelling unit per twenty acres.³⁴ In contrast, the County’s LAMIRD zoning
17 allows one dwelling unit per two acres (Ch.20.10A of the Thurston County Code); one
18 dwelling unit per acre (Ch. 20.11A of the Thurston County Code); and two dwelling units per
19 acre (Ch. 20.13A of the Thurston County Code).³⁵ In Thurston County, therefore, manmade
20 structures and facilities at residential densities of 1 dwelling unit per 5 acres or less; or at a
21 capacity to serve residential densities of 1 dwelling unit per 5 acres or less; do not constitute
22 the “built environment” for purposes of RCW 36.70A.070(5)(d)(iv). On the other hand,
23 manmade structures and facilities at residential densities of one or two dwelling units per
24 acre, or one dwelling unit per 2 acres, are considered “more intensive rural development”.
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27 In the case of the Rochester LAMIRD, the County considered both historic above-ground
28 structures (primarily residences) and the historic below-ground water system lines to identify
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31 ³¹ *Cockle v. Department of Labor and Industries*, 142 Wn.2d 801 at 809 (2001)

32 RCW 36.70A.030(16)

33 RCW 36.70A.030(18)

34 Thurston County Comprehensive Plan at 2-9

35 Index No. 604 –Ordinance No. 13834.

1 the built environment. Futurewise argues that water system lines must be of a “more
2 intensive” than rural level of service in order to qualify as part of the built environment.³⁶

3
4 In principle, the Board agrees with Futurewise. Under the GMA definitions of types of
5 services, water service can be either an urban service or a rural service. Rural services are
6 defined to include:

7 ...those public services and public facilities historically and typically delivered at an
8 intensity usually found in rural areas, and may include domestic water systems...³⁷

9
10 Urban services are also defined to include water systems as:

11 ... those public services and public facilities at an intensity historically and typically
12 provided in cities, specifically including... domestic water systems...³⁸

13 From these definitions, it is apparent that the critical factor in determining whether the water
14 system is a rural or urban system is the intensity at which water service is provided. A
15 “more intensive” rural use that characterizes a (d)(i) LAMIRD in Thurston County would be
16 of a capacity to serve rural residences at a density of one or two dwelling units per acre, or
17 of one dwelling unit per two acres.³⁹

18
19 However, Futurewise has not made a sufficient showing that some of the Water Association
20 lines are only of a rural level of service. No evidence has been put before the Board to
21 distinguish between those water system lines that are admittedly “more intensive rural” uses
22 and those which are asserted to be only rural in intensity. The Board therefore defers to the
23 County’s decision that the constructed water lines represent a more intensive rural level of
24 development throughout the Rochester LAMIRD.
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31 ³⁶ Futurewise’s Objection to a Finding of Compliance on the Limited Areas of More Intense Rural Development
(LAMIRD) Remand Issues at 7-8.

32 ³⁷ RCW 36.70A.030(17)(in pertinent part)

³⁸ RCW 36.70A.030(20)(in pertinent part)

³⁹ Thurston County Comprehensive Plan at 2-9 and Chs. 20.10A, 20.11A and 20.13A of the Thurston County
Code

1 The area of historically constructed water system lines is contained within the area that the
2 County denominated "Option 1".⁴⁰ Initially, the County identified an area for the Rochester
3 LAMIRD that is shown colored green on the proposed map for the Rochester LAMIRD in
4 Index No. 599 (Option 1).⁴¹ According to the June 4, BoCC LAMIRD Work Session
5 Addendum, this area is described as:

6 The parcels that display the greatest densities are concentrated in the area in green.
7 The boundary was drawn using a combination of streets, property lines, and water
8 system boundaries to contain the 1990 built environment which includes both above
9 and below ground development.⁴²

10
11 Comparing this first proposed LAMIRD in Index No. 599 (Option 1) with the Rochester
12 Water System map in Index No. 578 demonstrates that the map of Option 1⁴³ contains all of
13 the existing water distribution system lines shown on the Rochester Water System map⁴⁴.
14 Comparing Option 1⁴⁵ with the 1996 Aerial Orthophoto Overlay of the Rochester Water
15 Association⁴⁶, the only water line from 1996 that does not appear to be contained in Option
16 1 is a solitary line leading almost due south of Reservoir #2. From these exhibits it is
17 apparent that Option 1 includes all of the historic water system lines (with the exception of
18 the solitary line leading south from Reservoir #2 and not included in any proposal). The
19 Board therefore concludes that the water system as it was built in 1990 does not extend
20 beyond the boundaries of Option I in Index No. 599.

21
22
23 Within Option 1 there are also areas of undeveloped land that Futurewise argues should not
24 have been included since they were not part of the "built environment" in 1990 either, and
25 exceed the area where water system lines were constructed. The boundaries of Option 1
26 (the green colored area in Index No. 599) are not tightly drawn around the existing water
27 system lines. Again, the Water Association maps show where the lines have actually been
28

29
30 ⁴⁰ Exhibit QQ to the Compliance Report of the County.

31 ⁴¹ *Ibid.*

32 ⁴² *Ibid*; Index No. 599.

⁴³ Index No. 599

⁴⁴ Index No. 578

⁴⁵ Index No. 599

⁴⁶ Index No. 628, Map 2b

1 constructed, and the aerial photos give an idea of where houses were built (although the
2 photos are not focused at a level that would allow actual houses to be seen). Where Option
3 1 does not track the water system lines, the additional lands should be considered as a
4 logical outer boundary around the historic water system lines.
5

6 Of the other five optional areas that the County eventually included in the Rochester
7 LAMIRD, only Option 6 was based on other aspects of the “built environment”.⁴⁷ Option 6,
8 north of Option 1 and separated from it by Option 5, is described as “parcels north of 173rd
9 Avenue that were developed to include predominately built environment as of July 1,
10 1990.”⁴⁸ It appears from the aerial photos in Index No. 532A and Index No. 541 that the
11 “built environment” referenced in Option 6 was based upon smaller residential lots with
12 houses on them that are not served by the Water Association (since there were no water
13 lines serving that region depicted on the maps in either Index No. 578 or Index No. 628,
14 Map 2b). Based on the County’s zoning, these houses are at “more intensive rural
15 development” densities and constitute more intensive rural development as of 1990.⁴⁹
16
17

18 **Rochester LAMIRD “logical outer boundary”**

19 Futurewise finds fault with the inclusion of lands in Option 1 that are on the periphery of the
20 built environment and that are rural-sized lots (five acres or greater in size). These are
21 primarily located in the southwest quadrant of Option 1. The County points out, however,
22 that the commercial area in Rochester was not included in the LAMIRD that was adopted for
23 the area. Instead the County chose to leave that area with its existing commercial rural
24 zoning.⁵⁰ Therefore, those rural-sized parcels are not subject to this challenge. As for the
25 rural-sized parcels in the southeast quadrant, there are only two and these are in a physical
26 line with the unchallenged smaller lots. This falls within the factors for extension of a logical
27 outer boundary without violating the overall mandate to limit and contain more intensive
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31 ⁴⁷ Index No. 599 (June 4, 2007 BoCC LAMIRD Work Session Addendum)

32 ⁴⁸ *Ibid.*

⁴⁹ See the aerial photos in Index 232A and the parcel maps in Index No. 599.

⁵⁰ Index No. 604

1 rural development. Therefore, the inclusion of Option 1 in the Rochester LAMIRD complies
2 with RCW 36.70A.070(5)(c)(i),(d)(i) and (d)(iv).

3
4 The County did not adopt the area shown as Option 1 as the Rochester LAMIRD, however.
5 Instead it added five additional areas, labeled Options 2-6 on the map with Index No. 599.
6 While we have found that Option 6 is an area in which the 1990 built environment
7 predominates, the other four optional areas (Options 2-5) were added to "smooth" the
8 boundaries or to make them less "irregular".⁵¹ Therefore, these sections of the Rochester
9 LAMIRD should be assessed in terms, not of the built environment, but in terms of the four
10 factors for drawing logical outer boundaries around the built environment:
11

12 (A) the need to preserve the character of existing natural neighborhoods and
13 communities, (B) physical boundaries such as bodies of water, streets and highways,
14 and land forms and contours, (C) the prevention of abnormally irregular boundaries,
15 and (D) the ability to provide public facilities and public services in a manner that
16 does not permit low-density sprawl.

17 Adding Option 2, according to the work session addendum, would:
18 smooth boundary to 176th and add parcels depicted on map. This would create a
19 straighter line, but could lead to additional sprawl and may not be considered true
20 infill.⁵²

21 Adding Options 3 – 5, creates a less "irregular" boundary, the work addendum indicates, but
22 "would require including several large tracts of land that were not developed in 1990, are not
23 developed today and are not served by the water system."⁵³

24 The four factors to be considered in drawing a logical outer boundary for the residential
25 LAMIRD must be applied within the limitations imposed RCW 36.70A.070(5)(c)(i) to contain
26 or otherwise control rural development; and within the overall directive to "minimize and
27 contain the existing areas or uses of more intensive rural development" found in RCW
28 36.70A.070(5)(d)(iv). That is, the factors are not to be construed as a basis for significantly
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32 ⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

1 expanding the area beyond the built environment, which must “predominate”.⁵⁴ As the
2 County staff assessment points out, a chief concern is the creation of sprawl.⁵⁵ The creation
3 of a logical outer boundary is not a justification for adding rural lands when those lands
4 significantly expand the potential for more intensive rural development because this would
5 not “minimize and contain”⁵⁶ more intensive rural development.
6

7 The County’s analysis of the acreage available for new residential development in the
8 Rochester LAMIRD study area finds that almost a third of the land in the Rochester LAMIRD
9 will be divisible into additional lots under the zoning applicable to the LAMIRD.⁵⁷ This
10 means that the inclusion of large undeveloped lots in the Rochester LAMIRD creates the
11 potential for additional more intensive rural development. “Infill” is specifically contemplated
12 in the statute so that the mere addition of some lots through infill does not necessarily
13 violate the restrictions of RCW 36.70A.070(5)(d)(i) and (iv). However, “outfill” or the
14 inclusion of larger tracts of land on the periphery of the built environment is of major concern
15 as adding to, rather than minimizing and containing, more intensive rural development.
16
17

18 When evaluating the logical outer boundaries chosen for the Rochester LAMIRD, the Board
19 looks to the consistency of the County’s own rationale and choices. In the Rochester
20 LAMIRD, there is a major swath of property in the southwest quadrant which has not been
21 included in the LAMIRD. Arguably, this is land that is most characteristic of the historic
22 Rochester community, being the commercial core.⁵⁸ However, the County has chosen to
23 exclude it from the LAMIRD and to subject it to rural commercial zoning instead. The zoning
24 and development regulations represent the planning treatment the commercial core will
25 receive and have no other practical significance. Since this choice to exclude the
26 commercial core does not expand the area of the LAMIRD, it does not fail to contain and
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31 ⁵⁴ RCW 36.70A.070(5)(d)(iv)

32 ⁵⁵ *Ibid*; Index No. 599.

⁵⁶ RCW 36.70A.070(5)(d)(iv)

⁵⁷ Index 535

⁵⁸ Index No. 601

1 limit more intensive rural development within the LAMIRD itself.⁵⁹ It also indicates that even
2 property entirely surrounded by a LAMIRD does not have to be included in it. Similarly, the
3 County has chosen to follow property parcel lines in the eastern section of the Rochester
4 LAMIRD rather than nearby Irwin Street. This choice (here and in other parts of the
5 LAMIRD boundary) indicates that streets are not of particular significance to the character of
6 this LAMIRD.
7

8 The inclusion of Option 4 (to the south of Option 1) adds large parcels of undeveloped lands
9 on the periphery of the built environment and therefore constitutes “outfill” rather than “infill”.
10 Establishing a street boundary for that portion of the southwest quadrant of the Rochester
11 LAMIRD alone cannot be said to be a logical outer boundary where other boundaries in the
12 same region are simply property lines.
13

14
15 The inclusion of Option 3 also adds large undeveloped parcels and requires an extension of
16 the LAMIRD boundary to 173rd Street because there are no roads within Option 3. Then,
17 with the inclusion of Option 3, Option 5 is needed to make the boundary with Option 3
18 regular.⁶⁰ Adding a significant amount of undeveloped lands to the Rochester LAMIRD to
19 make the boundary more regular (Option 3), which then requires an additional area (Option
20 5) with a significant amount of undeveloped lands to be added to make the boundary with
21 Option 3 regular, simply adds “outfill” upon “outfill”⁶¹; this exceeds the permissible scope of
22 the logical outer boundary. Where the land added as a pre-existing “built environment”
23 (here Option 6) is smaller in size than the amount of acreage added to reach a boundary,
24 the requirement of a “predominately” built environment is not met. Therefore, the inclusion of
25 Options 3 - 5 in the Rochester LAMIRD does not comply with RCW 36.70A.070(5)(c)(i),(d)(i)
26 and (d)(iv).
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32 ⁵⁹ There has been no challenge to the exclusion of the commercial core from the Rochester LAMIRD.

⁶⁰ Index No. 599

⁶¹ Ibid

1 Option 2 is also added to the Rochester LAMIRD to create a regular boundary, this time with
2 the street boundaries of 176th Avenue and Pendleton Street. However, the Option 1
3 boundary without Option 2 also primarily uses street boundaries. The addition of Option 2
4 allows the creation of 25 new lots, according to the staff analysis.⁶² Option 2 constitutes
5 outfill in the sense that it does not predominately contain a built environment as of 1990.⁶³
6 The addition of those lands to Option 1 creates another layer of logical outer boundary
7 around an area that was already made larger through the drawing of the original logical
8 outer boundary. Areas within Option 1 in proximity to Option 2 were not more intensively
9 developed as of 1990 but were already included when Option 1 was delineated. For those
10 reasons, the inclusion of Option 2 does not comply with RCW 36.70A.070(5)(c)(i),(d)(i) and
11 (d)(iv).
12

13
14 **Conclusion:** The logical outer boundaries of the Rochester LAMIRD that include Option 1
15 as shown on Index No. 599 comply with RCW 36.70A.070(5)(c)(i),(d)(i) and (d)(iv). In them,
16 the built environment predominates and additional lands are included in a way that does not
17 fail to limit and contain the more intensive rural development. This is also true of Option 6,
18 in which the “built environment” predominates. On the other hand, the inclusion of Options
19 2– 5 on Index No. 599 creates significant “outfill” in the form of large lots in which the
20 historic built environment does not predominate. The inclusion of study area Options 2-5
21 allows for sprawl and does not minimize or contain the more intensive rural development
22 that existed as of 1990. Therefore, the inclusion of Options 2-5 does not comply with RCW
23 36.70A.070(5)(c)(i),(d)(i) and (d)(iv).
24
25

26 ***Issue 2 : Does the repeal of portions of the lot aggregation regulation (TCC***
27 ***20.56.020) fail to comply with GMA requirements for rural densities in the rural area?***
28
29
30
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32

⁶² *Ibid.*

⁶³ Exhibit 541

1 **Positions of the Parties**

2 The County challenges Petitioner's ability to object to the amendment to TCC 20.56.020,
3 the County's lot aggregation provision. The County and Bayfield Resources dispute
4 Futurewise's standing to raise it. The County argues: "Without standing under a petition, a
5 new petition challenging the compliance action would be required." This rule makes sense,
6 the County urges, because otherwise the County would not have the opportunity to consider
7 the issue prior to adoption of its legislation.⁶⁴ Futurewise, the County asserts, never
8 commented on the lot aggregation amendment.⁶⁵
9

10
11 Bayfield Resources argues that Futurewise did not comment on the proposed legislation
12 and cannot now object now.⁶⁶

13 Futurewise's failure to contest the amendments to the aggregate ordinance leaves
14 the Board with a record that fully supports the County's decision to modify the
15 regulations, and therefore a clear basis for dismissal of Futurewise's appeal.⁶⁷

16 Bayfield Resources asserts that there is no support in the record to show that the County
17 was clearly erroneous.⁶⁸
18

19 Futurewise objects that it never had the opportunity to respond to this argument since it was
20 raised after Futurewise's brief was submitted.⁶⁹ Futurewise was given the opportunity to
21 address the issue at oral argument and to offer any additional briefing it thought necessary.
22 Futurewise asserts that the notices concerning the County's proposed legislative action did
23 not reference the change to the lot aggregation regulations so that Futurewise did not really
24 have a basis for objecting to it. Further, Futurewise argues that the change to the lot
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28

29 ⁶⁴ Thurston County's Response to Compliance Objections Involving the Rochester LAMIRD and the Lot
30 Aggregation Issue at 15.

31 ⁶⁵ *Ibid* at 16.

32 ⁶⁶ Bayfield Resources Company's Response to Futurewise's Objection to a Finding of Compliance on the
LAMIRD Issues, September 21, 2007 at 2.

⁶⁷ *Ibid* at 3-4.

⁶⁸ *Ibid* at 7.

⁶⁹ Oral argument at compliance hearing.

1 aggregation regulations was part of the County's compliance efforts in this matter and
2 should be considered with the related LAMIRD compliance questions.

3
4 Futurewise argues that rural development densities have been high. "Between 2005 and
5 2007, 59 percent of the lots developed in rural Thurston County were two acres or less in
6 size."⁷⁰ By repealing the County's existing lot aggregation requirements, Futurewise argues,
7 it has made it easier to develop substandard lots in rural Thurston County.⁷¹

8
9 The County argues that the revisions to TCC 20.56.020 is supported by Goal 6 of the GMA,
10 the property rights goal (RCW 36.70A.020(6)).⁷² Further, the County points out, Futurewise
11 "fails to provide any evidence of how the change will affect Thurston County."⁷³
12

13 **Board Discussion**

14 This Board adheres to the view that an original party to the petition for review is not required
15 to re-establish his or her standing in the compliance proceedings. RCW 36.70A.330(2)
16 allows standing in a compliance hearing to any petitioner in the previous case, as well as to
17 any participant who has standing to challenge the legislation enacted in response to the
18 FDO⁷⁴ remand. *Panesko v. Lewis County* 00-2-0031c (Final Decision and Order, 3-5-01).
19 Therefore, the failure of Futurewise to comment on the changes to the lot aggregation
20 ordinance, whether excused or not, would not disqualify it from challenging them if they form
21 part of the County's compliance efforts.
22
23

24 On the other hand, a compliance proceeding should be limited to the issues on which
25 noncompliance was found in the final decision and order. In this case, Chapter 20.56 TCC
26 was not originally a subject of the Board's noncompliance findings and would not ordinarily
27
28

29
30 ⁷⁰ Futurewise's Objection to a Finding of Compliance on the Limited Areas of More Intense Rural Development
(LAMIRD) Remand Issues at 9.

31 ⁷¹ *Ibid* at 11.

32 ⁷² Thurston County's Response to Compliance Objections Involving the Rochester LAMIRD and Lot
Aggregation Issue at 14-15.

⁷³ *Ibid* at 15.

⁷⁴ Final Decision and Order

COMPLIANCE ORDER LAMIRDS AND LOT AGGREGATION

Case No. 05-2-0002

November 30, 2007

Page 22 of 31

1 be part of the compliance determination. However, the County adopted amendments to
2 TCC 20.56.020 as part of its compliance efforts – Section 16 of 19 sections in Ordinance
3 13834. Thus, the County itself presented the amendments to the Board as part of its
4 compliance efforts and they must be considered in that light.
5

6 The change to TCC 20.56.020(2) removes the limitation that “lots of record ...which are not
7 contiguous to other lots in the same ownership” could not be developed for uses and in the
8 manner otherwise permitted if the lot fails to meet lot area and width requirements. It thus
9 allows lots which are contiguous to other lots in the same ownership to be developed as if
10 they did meet the lot size requirements otherwise applicable to that zone. Such
11 substandard lots were not, under the prior regulation, developable if they were contiguous to
12 other lots in the same ownership. In short, previously owners were required to aggregate
13 their substandard lots with their other lots if they were contiguous; now they are not required
14 to aggregate them.
15
16

17 However, the Board agrees with the County that Futurewise has failed in its burden of proof.
18 Simply showing that there are a significant number of substandard rural lots being
19 developed within Thurston County’s rural area does not demonstrate how the repeal of the
20 County’s lot aggregation regulation violates any requirement of the GMA. There is no
21 showing of how many lots may be affected or where those are located. The Board cannot
22 simply assume that this change in regulation will result in the development of a significant
23 number of substandard lots in the rural area. Futurewise must bring forth evidence that this
24 would be the case.
25
26

27 **Conclusion:** Futurewise has failed to show that the change to TCC 20.56.020(2) will create
28 sprawl and will cumulatively require urban services in rural areas, as Futurewise alleges.⁷⁵
29 The amendment to TCC 20.56.020 is not clearly erroneous and therefore complies with the
30 GMA.
31
32

⁷⁵ *Ibid* at 12.

VI. INVALIDITY

Positions of the Parties

Futurewise urges the Board to impose invalidity on the Rochester LAMIRD and on the repealed lot aggregation requirements.⁷⁶ Futurewise argues that the high rural densities allowed in the noncompliant portions of the Rochester LAMIRD are the classic inappropriate conversion of undeveloped land into sprawling, low-density development” that Goal 2 of the GMA calls on the county to reduce.⁷⁷ The repealed lot aggregation requirements, Futurewise argues, also create sprawl in violation of Goal 2 and in addition interfere with forestry and agriculture in adjacent resource lands.⁷⁸ This, according to Futurewise, also violates Goal 8, the natural resource goal.⁷⁹

Board Discussion

A finding of invalidity may be entered when a board makes a finding of noncompliance and further includes a “determination, supported by findings of fact and conclusions of law that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter.” RCW 36.70A.302(1) (in pertinent part).

We have held that invalidity should be imposed if continued validity of the noncompliant comprehensive plan provisions or development regulations would substantially interfere with the local jurisdiction’s ability to engage in GMA-compliant planning. See *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, February 13, 2004). Under this analysis, a finding of invalidity has been imposed where there is a serious risk of significant inconsistent development vesting before the date on which the local jurisdiction is expected to achieve compliance.

⁷⁶ Futurewise’s Objection to a Finding of Compliance on the Limited Areas of More Intense Rural Development (LAMIRD) Remand Issues at 12-13.

⁷⁷ *Ibid* at 13.

⁷⁸ *Ibid*

⁷⁹ *Ibid*.

1 Since invalidity may only be imposed where noncompliance is found, Futurewise's request
2 applies only to the noncompliant LAMIRD designations. The extent of the risk of
3 inconsistent development occurring is dependent upon the facts of each case. In this case,
4 there has been no showing that inconsistent development applications are likely to vest in
5 significant numbers during the remand period. Importantly, Thurston County has shown
6 itself to have taken responsible steps to prevent such inconsistent development without the
7 imposition of invalidity in the past. Although it is possible that circumstances would change
8 such that an imposition of invalidity would become necessary, the Board finds that the
9 County's good faith efforts in the past as well as the lack of evidence of a serious risk of
10 significant inconsistent development during the compliance period make the imposition of
11 invalidity unwarranted at this time. However, Futurewise may bring a motion to impose
12 invalidity during the compliance period if the circumstances do change and applications for
13 inconsistent development within the noncompliant portions of the Rochester LAMIRD are
14 accepted by the County.
15
16

17 **Conclusion:** The Board finds that the circumstances here do not warrant the imposition of
18 invalidity.
19

20 21 VII. FINDINGS OF FACT

- 22 1. Thurston County is located west of the crest of the Cascade Mountains and is
23 required to plan pursuant to RCW 36.70A.040.
- 24 2. The Final Decision and Order in this case was issued July 20, 2005 and found six
25 areas of noncompliance in the County's update of its comprehensive plan and
26 development regulations pursuant to RCW 36.70A.130.
- 27 3. The noncompliance finding in this case relates to the County's designation and
28 zoning of high density rural areas. This was Conclusion of Law E in the Final
29 Decision and Order:
30 The County's high density rural residential designations (SR – 4/1; RR
31 2/1; RR 1/1; and RR 1/2); Housing and Residential Densities Policies 1
32 and 2, and Rural Land Use and Activities Policy 8; and the County's
development regulations implementing these designations (T.C.C. Ch.
20.10; T.C.C. Ch. 20.11; T.C.C. Chapter 20.13; and T.C.C. Chapter
20.14) fail to comply with RCW 36.70A.070(5).

- 1 4. In response to Conclusion of Law E, the County adopted Resolution No. 13833 and
2 Ordinance 13834 on June 18, 2007.
- 3
- 4 5. Petitioner Futurewise is the original petitioner in this case and participated in the
5 adoption of Resolution No. 13833 and Ordinance 13834. Futurewise opposes a
6 finding of compliance on Conclusion of Law E.
- 7 6. Adams Cove Group participated in the adoption of Resolution No. 13833 and
8 Ordinance 13834 and joins with Futurewise in opposing a finding of compliance in
9 this case.
- 10 7. Carl Teitge is a property owner in the Rochester limited area of more intensive rural
11 development (LAMIRD) and participated in the adoption of Resolution No. 13833 and
12 Ordinance 13834. He is an intervenor in this case.
- 13 8. Bayfield Resources is a property owner with an interest in the County's repeal of the
14 lot aggregation requirements of TCC 20.56.020. Bayfield Resources participated in
15 the adoption of Resolution No. 13833 and Ordinance 13834 and is an intervenor in
16 this case.
- 17 9. The Rochester Water Association provides water service to many of the properties
18 within the Rochester LAMIRD. Rochester Water Association participated in the
19 adoption of Resolution No. 13833 and Ordinance 13834 and is an intervenor in this
20 case.
- 21 10. The County designated and mapped 63 LAMIRDs with the adoption of Resolution
22 No. 13833 and Ordinance 13834. Only LAMIRD #57 (also the "Rochester LAMIRD")
23 was challenged by Petitioner Futurewise and Participant Adams Cove.
- 24 11. The small undeveloped vested lots in the Rochester area are not part of the "built"
25 environment for purposes of identifying an existing area of more intensive rural
26 development under RCW 36.70A.070(5)(d)(i), (iv), and (v).
- 27 12. The Rochester Water Association service area does not, in itself, define a "built
28 environment."
- 29 13. The County's comprehensive plan and development regulations define rural
30 residential densities as one dwelling unit per five acres, one dwelling unit per ten
31 acres, and one dwelling unit per twenty acres.
- 32 14. The County's LAMIRD zoning allows one dwelling unit per two acres (Ch.20.10A of
the Thurston County Code); one dwelling unit per acre (Ch. 20.11A of the Thurston

County Code); and two dwelling units per acre (Ch. 20.13A of the Thurston County Code).

15. The area of historically constructed water system lines is contained within the area that the County denominated "Option 1" on the proposed map for the Rochester LAMIRD in Index No. 599. The map of Option 1 contains all of the historic water distribution system lines shown on the Rochester Water System map.

16. The commercial area in Rochester was not included in the LAMIRD that was adopted for the area although it was originally included in the study of Option 1.

17. There are only two rural-sized parcels in the southeast quadrant of Option 1 and these are in a physical line with the unchallenged smaller lots. The inclusion of these two lots falls within the factors for extension of a logical outer boundary without violating the overall mandate to limit and contain more intensive rural development.

18. Option 6 is based upon a built environment as of July 1990 of smaller residential lots with houses on them at more intensive rural densities under the County's comprehensive plan and development regulations. These lots are not served by the Rochester Water Association but were developed at more intensive rural densities as of July 1990.

19. The other four optional areas (Options 2-5) were added to "smooth" the boundaries or to make them less "irregular".

20. Adding Options 2 – 5 to the Rochester LAMIRD requires including several large tracts of land that were not developed in 1990, are not developed today and are not served by the water system.

21. The inclusion of Option 3 also adds large undeveloped parcels and requires an extension of the LAMIRD boundary to 173rd Street because there are no roads within Option 3.

22. With the inclusion of Option 3, Option 5 was added to make the boundary with Option 3 regular. Adding undeveloped lands to the Rochester LAMIRD to make the boundary more regular (Option 3), which then requires additional lands to be added to make the boundary with Option 3 regular creates "outfill" upon "outfill".

23. "Outfill" or the inclusion of larger tracts of land on the periphery of the built environment is of major concern as it constitutes adding to, rather than minimizing and containing, more intensive rural development.

- 1 24. Options 2, 3 and 5 add outfill to the Rochester LAMIRD and are not based on the built
2 environment as of 1990.
- 3 25. The inclusion of Option 4 (to the south of Option 1) adds large parcels of undeveloped
4 lands on the periphery of the built environment.
- 5 26. The addition of Option 4 was only explained as establishing a street boundary for that
6 portion of the southwest quadrant of the Rochester LAMIRD. Expansion to a street
7 alone cannot be said to be a logical outer boundary where the other boundaries in the
8 same region of the Rochester LAMIRD are simply property lines. Given the need to
9 contain and limit the more intensive rural development to avoid allowing sprawl, the
10 fact of a street does not justify the inclusion of such outfill as the large undeveloped
11 lots in Option 4.
- 12 27. The inclusion of Options 2 – 5 on Index No. 599 for the purpose of creating a logical
13 outer boundary also creates significant “outfill” in the form of large lots in which the
14 historic built environment does not predominate. The inclusion of Options 2-5 in the
15 Rochester LAMIRD allows for sprawl and does not minimize or contain the more
16 intensive rural development that existed as of 1990.
- 17 28. The County adopted amendments to TCC 20.56.020 as part of its compliance efforts
18 – Section 16 of 19 sections in Ordinance 13834 and presented the amendments to
19 the Board as part of its compliance efforts on Conclusion of Law E.
- 20 29. Ordinance 13834 amends TCC 20.56.020(2) to remove the limitation that “lots of
21 record ...which are not contiguous to other lots in the same ownership” cannot be
22 developed for uses and in the manner otherwise permitted if the lot fails to meet lot
23 area and width requirements.
- 24 30. Prior to the amendment to TCC 20.56.020, owners were required to aggregate their
25 substandard lots in the rural area with their other lots if they were contiguous with one
26 another; now they are not required to aggregate them.
- 27 31. There is no showing of how many lots may be affected or where those are located.
- 28 32. There is no evidence in the record that this change in regulation will result in the
29 development of a significant number of substandard lots in the rural area.

30 **VIII. FINDINGS RELATED TO INVALIDITY**

- 31 33. In the past, Thurston County has shown itself to have taken responsible steps to
32 prevent inconsistent development from occurring during the compliance remand
period without the imposition of invalidity.

1 34. There has been no showing that inconsistent development applications are likely
2 to vest in significant numbers during the remand period.

3 35. Any finding of fact hereafter determined to be a conclusion of law is hereby
4 adopted as such.

5 **IX. CONCLUSIONS OF LAW**

- 6
- 7 A. The Board has jurisdiction over the parties and subject matter of this compliance
8 case.
- 9 B. Futurewise and Adams Cove Group have standing to contest a finding of
10 compliance as to Conclusion of Law E and the amendment to TCC 20.56.020.
- 11 C. Carl Teitge, Bayfield Resources and the Rochester Water Association have
12 standing as participants and intervenors to participate in this compliance
13 proceeding.
- 14 D. Resolution No. 13833 and Ordinance No. 13834 were adopted to achieve
15 compliance with this Board's finding of noncompliance in the July 20, 2005 Final
16 Decision and Order, Conclusion of Law E.
- 17 E. That portion of the Rochester LAMIRD that is described as Options 1 and 6 on the
18 map of Index No. 599 complies with the requirements for LAMIRDs in RCW
19 36.70A.070(5)(c), 36.70A.070(5)(d)(i), (iv) and (v).
- 20 F. That portion of the Rochester LAMIRD that is described as Options 2, 3, 4 and 5
21 on the map of Index No. 599 are clearly erroneous and fail to comply with the
22 requirements for LAMIRDs in RCW 36.70A.070(5)(c), 36.70A.070(5)(d)(i), (iv) and
23 (v).
- 24 G. The amendment to TCC 20.56.020 adopted in Ordinance No. 13834 is not clearly
25 erroneous and complies with RCW 36.70A.070(5).
- 26 H. The remaining comprehensive plan policy amendments, LAMIRD designations
27 and development regulations adopted in Resolution No. 13833 and Ordinance
28 No. 13834 relating to high density rural areas in Thurston County comply with
29 RCW 36.70A.070(5).
- 30 I. The re-designation and re-zoning of rural areas outside of LAMIRD boundaries
31 from high-density to rural densities adopted in Resolution No. 13833 and
32 Ordinance No. 13834 complies with RCW 36.70A.070(5).
- J. An imposition of invalidity on the noncompliant portions of Resolution No. 13833
and Ordinance No. 13834 is not warranted at this time.
- K. Any conclusion of law that is determined to be a finding of fact is hereby adopted
as such.

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X. ORDER

The County is ordered to achieve compliance with the requirements and goals of the Growth Management Act in accordance with this order no later than **March 27, 2008**. The following schedule shall apply:

Compliance Due	March 27, 2008
Compliance Report and Index to the Record Due	April 3, 2008
Any Objections to a Finding of Compliance Due	April 24, 2008
County's Response Due	May 19, 2008
Compliance Hearing (location to be determined)	May 29, 2008

Dated this 30th day of November, 2007.

Margery Hite, Board Member

Holly Gadbow, Board Member

James McNamara, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

1 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
2 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
3 judicial review may be instituted by filing a petition in superior court according to the
4 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

5 **Enforcement.** The petition for judicial review of this Order shall be filed with the
6 appropriate court and served on the Board, the Office of the Attorney General, and all
7 parties within thirty days after service of the final order, as provided in RCW
8 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
9 but service on the Board means actual receipt of the document at the Board office
within thirty days after service of the final order.

10 **Service.** This Order was served on you the day it was deposited in the United States
11 mail. RCW 34.05.010(19)

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